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13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 MICHELE BROWN, an individual;

CASE NO.: 2:22-cv-00972-RFB-NJK

16 Plaintiff,

17 vs.

18 ZELTIQ AESTHETICS, INC., a Delaware
 19 Corporation; ORANGE TWIST LLC, a Nevada
 Limited Liability Company; DOES 1 through
 20 10, inclusive; ROE CORPORATIONS 11
 through 20, inclusive; and ABC LIMITED
 21 LIABILITY COMPANIES 21 through 30,
 inclusive,

**PLAINTIFF'S MOTION TO AMEND
COMPLAINT**

22 Defendants.

23 **PLAINTIFF'S MOTION TO AMEND COMPLAINT**

24 Plaintiff, MICHELE BROWN (“Plaintiff”), by and through her counsel of record, Robert
 25 T. Eglet, Esq., Danielle C. Miller, Esq., and Brittney R. Glover, Esq. of EGLET ADAMS and
 26 Andréa L. Vieira, Esq., of THE VIEIRA FIRM hereby respectfully submits this motion for leave
 27 to amend her First Amended Complaint (“Complaint”). This motion is based on the papers and
 28

1 pleadings on file the Memorandum of Points and Authorities below, the attached Second Amended
 2 Complaint, and any oral argument the Court may hear. In compliance with LR 15-1, a copy of the
 3 proposed Second Amended Complaint is attached as *Exhibit 1*.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. BACKGROUND AND PROCEDURAL HISTORY**

6 This is a products liability action that was removed from the Eighth Judicial District
 7 Court.¹ Recently, counsel for Defendant ORANGE TWIST, LLC (“Orange Twist”) contacted
 8 Plaintiff’s counsel and identified a party who Defendant contends is the “correct entity that
 9 provided services to [Plaintiff].”² Since that date, Plaintiff’s counsel has attempted to obtain
 10 additional information on this potential Defendant, Illuminate Medical Orna Fisher M.D., PC.³
 11 To date, no additional information has been provided.

12 This court ordered Orange Twist to file a Certificate of Interested Parties that lists the
 13 name and citizenship of each member/owner.⁴ Orange Twist filed an Amended Certificate of
 14 Interested parties⁵ and a Second Amended Certificate of Interested Parties.⁶ However, none of
 15 these documents mention Illuminate Medical Orna Fisher M.D., PC.

16 Upon further research, a press release dated September 26, 2016 states that Dr. Orna
 17 Fisher joined Illuminate, the predecessor to Orange Twist, as the Chief Wellness Officer.⁷ As
 18 alleged in the First Amended Complaint, Orange Twist merged with Illuminate Face & Body Bar
 19 on or about April 30, 2019, resulting in all Illuminate Face & Body Bar locations being fully
 20 branded as OrangeTwist locations on or about July 2019.⁸ Upon information and belief, when
 21 Plaintiff treated at Orange Twist, it was still operating as Illuminate Face & Body Bar.

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¹ ECF No. 1.

² See email from Linda K. Rurangirwa, dated April 26, 2023, ***Exhibit 2***.

³ See Declaration of Andréa L. Vieira, Esq. in Support of Plaintiff’s Motion to Amend Complaint.

⁴ ECF No. 50.

⁵ ECF No. 52.

⁶ ECF No. 55.

⁷ See ***Exhibit 3***, retrieved from <https://www.newswire.com/news/dr-orna-fisher-joins-illuminate-face-body-bar-as-chief-wellness-officer-14845957>

⁸ ECF No. 1, 10:17-20.

As of the date of filing this motion, on Orange Twist's website under "Meet Our Medical Team" Orna Fisher is listed and the bio states "Illuminate Medical Orna Fisher M.D., PC, Las Vegas Office and Body Concepts by OrangeTwist 1 Corp."⁹, as follows:

Thereafter, in August 2023, Plaintiff learned that Natalie Guier and Michelle Tio-Nguyen



las vegas + santa clara
DR. ORNA FISHER

Dr. Orna Fisher is double board-certified Diplomat, American Board of Plastic Surgery and Diplomat, American Board of Surgery specializing in cosmetic surgery. In addition to her surgical artistry, Dr. Fisher is a certified integrative nutrition health coach. This combined experience fuels her passion for beauty and wellness, and Dr. Fisher has become an expert in both skincare and non-surgical aesthetic rejuvenation treatments. Illuminate Medical Orna Fisher M.D., PC, Las Vegas Office and Body Concepts by OrangeTwist 1 Corp.

provided services to Plaintiff while employed and/or contracted with Orange Twist and/or Illuminate Medical Orna Fisher M.D., PC. Further, Plaintiff learned that Orange Twist and Illuminate Medical Orna Fisher M.D., PC were in a contractual agreement to provide aesthetic treatments to the public.

Orange Twist and Illuminate Medical Orna Fisher M.D., PC entered into a management agreement encompassing, among other things: hiring, training, supervision, and practice

⁹ See **Exhibit 4**, retrieved from <https://orangetwist.com/our-medical-team/>.

1 management. Orange Twist and Illuminate Medical Orna Fisher M.D., PC jointly and/or through
 2 their partnership leased and operated the CoolSculpting equipment used by Natalie Guier and
 3 Michelle Tio-Nguyen on Plaintiff.

4 Therefore, Plaintiff believes that Illuminate Medical Orna Fisher M.D., PC, Natalie Guier,
 5 and Michelle Tio-Nguyen should be a defendants in this case and hereby respectfully seeks leave
 6 to amend its complaint to add said defendants.

7 **II. LAW AND ARGUMENT**

8 Under FRCP 15, a party may amend its complaint only by leave of the court after
 9 responsive pleadings have been filed and in the absence of the adverse party's written consent.¹⁰
 10 Courts have discretion to grant leave and should freely do so "when justice so requires."¹¹

11 There is a strong public policy in favor of permitting amendment.¹² The Ninth Circuit has
 12 made clear that Rule 15(a) is to be applied with "*extreme liberality*".¹³ Leave to amend should be
 13 denied as futile "only if no set of facts can be proven under the amendment to the pleadings that
 14 would constitute a valid and sufficient claim." *Barahona v. Union Pac. R.R.*, 881 F.3d 1122, 1134
 15 (9th Cir. 2018).

16 Courts limit denials of leave to amend where: (1) it will cause undue delay; (2) it will cause
 17 undue prejudice to the opposing party; (3) the request is made in bad faith; (4) the party has
 18 repeatedly failed to cure deficiencies; or (5) the amendment would be futile.¹⁴ These factors do
 19 not carry equal weight, however, with prejudice being the most significant factor.¹⁵ The party
 20 opposing the amendment bears the burden of showing why leave should be denied.¹⁶ Each factor
 21 is addressed below:

22 1. No Undue Delay

23 An Order for Enlargement of Time to Complete Discovery was entered in this matter on

24

¹⁰ *Thornton v. McClatchy Newspapers, Inc.*, 261 F.3d 789, 799 (9th Cir. 2001).

25 ¹¹ *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990) (quoting Fed. R. Civ. P. 15(a)).

26 ¹² *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir. 1999).

27 ¹³ *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (emphasis added).

28 ¹⁴ *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008). *Simon Design Eng'g v. W & W Steel*, No. 2:08-cv-01291-RLH-PAL, 2009 U.S. Dist. LEXIS 153044, at *4 (D. Nev. Feb. 2, 2010).

29 ¹⁵ *Id.*

30 ¹⁶ *Llavata v. Morrow*, 2012 WL 789130, at *1 (D. Nev. Oct. 22, 2012). *Behrends v. Taggart*, No. 2:20-cv-00571-GMN-NJK, 2021 U.S. Dist. LEXIS 6468, at *2 (D. Nev. Jan. 12, 2021).



1 July 12, 2023, which set the deadline for filing a motion to amend pleadings or add parties to
 2 October 30, 2023.¹⁷ Therefore, this motion is timely.

3 There will be no delay caused by Plaintiff's amendment because litigation has only recently
 4 commenced in this matter due to several delays not caused by Plaintiff. The parties attended
 5 mediation on August 28, 2023 at Orange Twist's expense due to an Order entered by this Court.¹⁸
 6 On September 1, 2023, Defendant Zeltiq sent letters to Natalie Guier and Michelle Tio-Nguyen
 7 for their depositions.¹⁹

8 2. No Prejudice to the Opposing Parties

9 There will be no prejudice to Defendants. First, Orange Twist already possesses
 10 information regarding potential liability for these defendants, since it was Orange Twist's counsel
 11 that contacted Plaintiff's counsel identifying Illuminate Medical Orna Fisher M.D., PC as a
 12 potential defendant. Further, it was Orange Twist that provided information regarding the
 13 relationship between the defendants.

14 Second, the addition of these defendants does not impact Zeltiq since Zeltiq is a wholly
 15 separate entity from Orange Twist.

16 Third, as no depositions have taken place in this matter, these defendants whose identity
 17 and role were exclusively known to Orange Twist until this time can be added to this litigation
 18 without any impact on discovery. Zeltiq has already reached out to Natalie Guier and Michelle
 19 Tio-Nguyen for their depositions, and the parties will have ample time and opportunity to conduct
 20 necessary discovery.

21 3. Request Is Not Made in Bad Faith

22 This request is not made in bad faith because it is based on information provided by
 23 Orange Twist's counsel and subsequently learned in August 2023. This motion was brought after
 24 independent research that confirmed the proposed defendants' involvement during the time that
 25 Plaintiff received the Coolsculpting treatment implicates said defendants.

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17 ECF No. 76.

18 ECF No. 72.

19 See Letters, dated September 1, 2023, attached hereto as ***Exhibit 5***.



4. There Have Been No Deficiencies for Plaintiff to Cure

There have been no deficiencies for Plaintiff to cure therefore factor number four does not apply in this matter.

5. This Amendment is Not Futile

“[A] proposed amendment is futile only if no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense.”²⁰ Plaintiff’s amendment is not futile because Orange Twist identified Illuminate Medical Orna Fisher M.D., PC as the “correct entity that provided services to [Plaintiff].” Therefore, based Plaintiff has valid claims against this entity.

III. CONCLUSION

Based on the foregoing, good cause exists to allow Plaintiff to amend her Complaint and Plaintiff respectfully requests that this Court grant Plaintiff's Motion to Amend Complaint.

Dated this 18th day of September, 2023.

EGLET ADAMS

By: /s/ Danielle C. Miller, Esq.

ROBERT T. EGLET, ESQ.

Nevada Bar No. 3402

DANIELLE C. MILLER, ESQ.

Nevada Bar No. 9127

BRITTNEY R. GLOV

Nevada Bar No. 15412

400 South Seventh Street,

²⁰ *Sweaney v. Ada County, Idaho*, 119 F.3d 1385, 1393 (9th Cir.1997)



CERTIFICATE OF SERVICE

Pursuant to FRCP 5 and LR IC 1-1, I hereby certify that I am an employee of EGLET ADAMS and on September 18, 2023, I served a true and correct copy of the foregoing **PLAINTIFF'S MOTION TO AMEND COMPLAINT** on the all parties registered for e-service in the service list of this matter on the Court's electronic filing system, or if the document is one that will not be filed electronically pursuant to LR IC 1-1(c), via U.S. Mail postage fully prepaid, addressed to each party as follows:

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/s/ Bianca Marx
An Employee of EGLET ADAMS

1 **DECLARATION OF ANDRÉA L. VIEIRA, ESQ IN SUPPORT OF MOTION TO**
2 **AMEND COMPLAINT**

3 STATE OF NEVADA)
4)
5 COUNTY OF CLARK) ss:
6

7 I, Andréa L. Vieira, Esq., having been first duly sworn on oath and under penalty of perjury,
8 state as follows:

9 1. I am a resident of Clark County, Nevada over the age of 18 years old and have
10 personal knowledge of the facts and circumstances referenced herein and I am prepared to testify
11 under oath thereto.

12 2. I am one of the counsel for Plaintiff MICHELE BROWN.

13 3. On April 26, 2023, I received an email from Linda K. Rurangirwa, Esq., counsel
14 for Orange Twist that stated in part, “I have been informed that the correct entity that provided
15 services to your client should be Illuminate Medical Orna Fischer PC.” I hereby certify that a true
16 and correct copy of the email exchange is attached hereto as ***Exhibit 2***.

17 4. On May 2, 2023, I replied to Ms. Rurangirwa and requested additional
18 information.

19 5. On the same date, I received a response from Patricia Daehnke, Esq., also counsel
20 for Orange Twist, who stated that she would be speaking with general counsel the following day
21 and would get me “all relevant information shortly thereafter.”

22 6. On May 10, 2023, I followed up with counsel regarding this issue. No response
23 was received, and I followed up again on May 17, 2023.

24 7. On May 19, 2023, I received another email from Ms. Rurangirwa who stated that
25 she was getting “further clarification from corporate counsel.”

26 8. To date, no additional information has been provided.

27 9. I conducted independent research to ascertain Illuminate Medical Orna Fischer
28 PC’s relationship to Orange Twist.

29 10. Attached hereto as ***Exhibit 3*** is a true and correct copy of Orange Twist’s webpage
30 I retrieved from <https://www.newswire.com/news/dr-orna-fisher-joins-illuminate-face-body-bar->



[as-chief-wellness-officer-14845957](#) on July 31, 2023.

11. Attached hereto as *Exhibit 4* is a true and correct copy of Orange Twist's webpage I retrieved from <https://orangetwist.com/our-medical-team/>

12. I attended the mediation in this matter on August 28, 2023 along with co-counsel, Eglet Adams.

13. Following the mediation, counsel for Zeltiq sent letters to Michelle Tio-Nguyen and Natalie Guier stating that they would like to take said persons' depositions regarding the care and treatment provided to Plaintiff while they were employed at while employed at Orange Twist and/or Illuminate Face & Body Bar. A true and correct copy of said letters is attached hereto as

Exhibit 5.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Dated this 18th day of September, 2023.

/s/ Andréa L. Vieira
ANDRÉA L. VIEIRA, ESQ.

Index of Exhibits

Brown v. Zeltiq Aesthetics, Inc., et al
(U.S. District Court Case No. Case No. 2:22-cv-00972-RFB-NJK)

NO.	DOCUMENT
Exhibit	Description
1.	Plaintiff's Proposed Second Amended Complaint.
2.	Email from Linda K. Rurangirwa, Esq., counsel for Orange Twist, dated April 26, 2023.
3.	A true and correct copy of Orange Twist's webpage I retrieved from https://www.newswire.com/news/dr-orna-fisher-joins-illuminate-face-body-bar-as-chief-wellness-officer-14845957
4.	A true and correct copy of Orange Twist's webpage I retrieved from https://orangetwist.com/our-medical-team/
5.	Letters to Michelle Tio-Nguyen and Natalie Guier.